

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TRANSPORTATION**

**Call to Order:** By **CHAIRMAN ROGER SOMERVILLE**, on February 2, 2001  
at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Roger Somerville, Chairman (R)  
Rep. Darrel Adams (R)  
Rep. Sylvia Bookout-Reinicke, Vice Chairman (R)  
Rep. Joe Balyeat (R)  
Rep. Debby Barrett (R)  
Rep. Ronald Devlin (R)  
Rep. George Golie (D)  
Rep. Donald L. Hedges (R)  
Rep. Jim Keane (D)  
Rep. Gary Matthews (D)  
Rep. William Price (R)  
Rep. Allen Rome (R)  
Rep. Frank Smith (D)  
Rep. Donald Steinbeisser (R)  
Rep. Karl Waitschies (R)

**Members Excused:** Rep. Carol C. Juneau, Vice Chairman (D)  
Rep. Dave Gallik (D)  
Rep. Steven Gallus (D)

**Members Absent:** None.

**Staff Present:** Leanne Kurtz, Legislative Branch  
Stacie Leitgeb, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 401, HB 430, HB 433,  
02/02/01  
Executive Action: HB 131, HB 363

**EXECUTIVE ACTION ON HB 131****{Tape : 1; Side : A; Approx. Time Counter : 3.2}****Discussion:**

**Chairman Somerville** said the Amendment for HB 131 passed on Wednesday, 01/31/01. He said HB 131 is now before them as Do Pass As Amended. He said the discussion they had during executive action dealt with page 2, line 29. He said **Rep. Gallik** said he did not agree with the "probable cause" language that was used. **Greg Pettish** was there to talk to the committee about the language that was proposed and attached by the amendment.

**Greg Pettish** said he recommended to **Leanne Kurtz** the standard should be "probable cause" standard. He said the Montana Supreme Court case said in order to search an automobile, two things are required. One is an existence of probable cause to search and second, the presence of exigent circumstances to make it impracticable to obtain a search warrant under those circumstances.

**{Tape : 1; Side : A; Approx. Time Counter : 10}**

**Rep. Devlin** asked **Mr. Pettish** if, in the case that a vehicle is stopped for speeding, can the officer inspect the fuel tank. **Mr. Pettish** said if the driver of the vehicle consents, because the officer does not have probable cause to believe that the person speeding, which was the basis upon which he was pulled over, is using illegal fuel unless the officer has an informant's tip.

**Rep. Barrett** asked **Mr. Pettish** if an informant can remain anonymous. **Mr. Pettish** said, in order to establish probable cause, the informant must be known and reliable. He said anonymous tips are usually not allowed to establish probable cause, but they can be used to establish a reasonable suspicion.

**Motion/Vote:** **REP. BOOKOUT-REINICKE** moved that **HB 131 DO PASS AS AMENDED**. Motion carried 11-6 with **Adams, Balyeat, Barrett, Devlin, Gallik, and Waitschies** voting no.

**{Tape : 1; Side : A; Approx. Time Counter : 16.2}****Hearing on HB 401**

**Sponsor:** **Rep. Michelle Lee, HD 26, Livingston.**

**Proponents:** Russ Ritter, Montana Rail Link; Pat Kiem, Director of Public Affairs of Burlington Northern Santa Fe Railway; Fran Marceau, United Transportation Union; Craig Gilchrist, Chairman of the Legislative Board for the Brotherhood of Locomotive Engineers.

**Opponents:** none.

**Opening Statement by Sponsor:**

**Rep. Michelle Lee** said this is an act creating the railroad vandalism prevention act, establishing the offenses as they are listed and establishing penalties for those offenses. She said there are amendments, and if this bill is not amended, she would like the committee to table it. She said some sections of the bill are off the topic and speak to trespass, which is an issue that has been debated before and the two issues were merged in this bill. She wants all references to trespass taken out of the bill. **EXHIBIT**(trh27a01).

**Proponents' Testimony:**

**Russ Ritter** said they are in full support of the amendments proposed by **Rep. Lee**. He said when spray paint gets on the recognition numbers of a particular rail car, it is hard to find that rail car. It cost MRL around \$3,800.00 per rail car to refurbish them. This bill will allow them to go on a campaign to define what vandalism is and how strong the railroad industry is against it. MRL is willing to invest in signs that reference a particular law talking about railroad vandalism.

***{Tape : 1; Side : A; Approx. Time Counter : 20.8}***

**Pat Kiem** said they stand in support of HB 401 and the amendments proposed. He said each rail car has markings that are the identity of the rail car and that is how they can track shipments. Also, signal lights have been shot out or painted over and vandalized. He said vandalism is a serious safety problem.

**Fran Marceau** said they support HB 401 with the support of the amendments proposed by **Rep. Lee**. He said reports of theft and vandalism on railroad property are increasing.

**Craig Gilchrist** said they also support HB 401 with amendments proposed. He said vandalism is also dangerous for the people on board the trains.

**Opponents' Testimony:** none.

**Questions from Committee Members and Responses:**

**Rep. Bookout-Reinicke** asked **Rep. Lee** what the penalty was for railroad vandalism. **Rep. Lee** said \$20,000.

**Rep. Waitschies** asked **Mr. Kiem** why the current laws on vandalism were not enough. **Mr. Kiem** said there seems to be some concern from law enforcement of how clear their authority is on vandalism. There is a need to clarify this to law enforcement.

**{Tape : 1; Side : B; Approx. Time Counter : 0.3}**

**Rep. Gallik** asked **Mr. Ritter** what the difference was between current penalties and laws for general vandalism and theft and what **Rep. Lee** is proposing in this bill. **Mr. Ritter** said they are trying to adopt the same standards that the FRA is trying to get established throughout the United States. He said there is a railroad program called Operation Lifesaver. This program is an attempt by the employees of the railroad to explain to people how dangerous it is to race a train with an automobile. He said they would like to do a program similar to that concerning railroad vandalism.

**Chairman Somerville** asked **Mr. Ritter** if there was any other part of Montana Annotated Code that has definitions for railroad. **Mr. Ritter** said he is not aware of any particular law that references railroad vandalism by name.

**{Tape : 1; Side : B; Approx. Time Counter : 5.3}**

**Rep. Balyeat** asked **Mr. Ritter** what the current penalties were for general vandalism and how they compared with this proposed legislation. **Mr. Ritter** said they follow the Federal Standards.

**Leanne Kurtz** read section 45-6-101, Criminal Mischief.

**Rep. Balyeat** asked **Rep. Lee** what the distinction in the bill is concerning fines for minors and adults. **Rep. Lee** said she didn't know if there is a distinction.

**Rep. Devlin** asked **Mr. Ritter** what kind of luck they are having now catching vandals and prosecuting vandals under current statute. **Mr. Ritter** said it is not good, but they hope to emphasize to law enforcement how serious this type of vandalism is.

**{Tape : 1; Side : B; Approx. Time Counter : 21.3}**

**Rep. Balyeat** said to **Mr. Ritter** there seems to already be stiff penalties in current law on vandalism of a \$50,000 fine if transportation is affected by that act of vandalism.

**Chairman Somerville** asked **Rep. Lee** why this legislation is being proposed if there are already stiff penalties in the current law, 45-6-101, Criminal Mischief. **Rep. Lee** said she did not draft this bill, **Senator Mahlum** had requested this bill, originally. **Chairman Somerville** redirected to **Mr. Ritter** who said, on page 3 of the bill this talks directly about acts relating to the railroad, and we could use this language as an educational process for the serious nature of this type of vandalism on railroads.

**Closing by Sponsor:**

**Rep. Lee** said vandalism is very expensive and dangerous, and it is a matter of public health and safety. She urges a Do Pass on HB 401.

**HEARING ON HB 430**

**Sponsor:** Rep. Gilda Clancy, HD 51.

**Proponents:** Joe Roberts, Private Pilot; Linda Marshall, Flight Instructor; Bob Lipscomb, Private Pilot; Frank Bass, Lewistown; John Rabenburg, Aeronautics Board for State of Montana; John McKenna, Private Pilot; Larry Mires, Glasgow; Marilyn Lewis, Montana Flying Farmers; Jack Gillespie, Montana Pilots Association; Doug Monger, Self; Jim Steffeck, Self-Aviator;

**Opponents:** none.

**Informational Witnesses:** Mike Ferguson, Aeronautics Division of Montana Department of Transportation.

**Opening Statement by Sponsor:**

*{Tape : 2; Side : A; Approx. Time Counter : 0.3}*

**Rep. Clancy** said this bill is supported by the Montana Aviation Trades Association and the Montana Pilots Association. She said a similar program has been in place in Idaho and is successful. She said HB 430 will provide courtesy car transportation at rural airports. She said this bill will authorize the Aeronautics Division of the Department of Transportation to provide funding to purchase used vehicles for interested communities meeting the

criteria set forth in this bill. **Rep. Clancy** asked that HB 137, which was the original draft, be tabled.

**Proponents' Testimony:**

**Joe Roberts** said the courtesy car program in Idaho is a great program and should be in Montana. This bill is for the rural airports.

**Linda Marshall** said she has flown to a lot of rural airports in Montana and is originally from Idaho and she has used the Idaho program. She said she is for this program.

**Bob Lipscomb** said he has utilized the Idaho program and supports HB 430.

**Frank Bass** said he supports HB 430.

**John Rabenburg** said he supports HB 430.

**John McKenna** said he supports HB 430.

**Larry Mires** said he supports HB 430.

**Marilyn Lewis** said she supports HB 430.

**Jack Gillespie** said he is speaking for the Montana Pilots Association and for Montana Trades Assoc., they strongly support this bill. He said this program is being funded by aviation fuel taxes.

**Doug Monger** said he supports HB 430.

**Jim Steffeck** said he supports HB 430.

**Opponents' Testimony:** none.

**Questions from Committee Members and Responses:**

***{Tape : 2; Side : A; Approx. Time Counter : 16.3}***

**Rep. Barrett** asked **Mr. Roberts** what locations in Montana would have cars. **Mr. Roberts** said they would be at rural airports.

**Rep. Bookout-Reinicke** asked Mr. Roberts, on Page 2, what department are we talking about and what are their rules for when a person could borrow a car, and who puts the gas in it when the car is returned. **Mr. Roberts** said the department is the

Department of Transportation, the Aeronautics Board. He spoke about the Idaho Program rules.

***{Tape : 2; Side : A; Approx. Time Counter : 22.2}***

**Rep. Waitschies** asked **Mr. Roberts**, in the Idaho studies, who assumes liability. **Mr. Roberts** said Idaho waives, by legislation, the defense of sovereign immunity for any death, or personal injury, or property damage which occurs by state use.

**Rep. Waitschies** asked **Mr. Roberts** in this bill does the State of Montana assume any responsibilities for liability. **Mr. Roberts** said the state could be sued, but insurance has to be on these cars if a local entity will be in this program.

**Rep. Price** asked **Mr. Roberts** who would hold the title of these cars. **Mr. Roberts** said the title would be held by the city/county airport.

**Rep. Gallik** asked **Rep. Clancy** if she would consider a "hold harmless" amendment for the bill. **Rep. Clancy** said she would, if it satisfied the state where claims are concerned.

***{Tape : 2; Side : B; Approx. Time Counter : 0.3}***

**Closing by Sponsor:**

**Rep. Clancy** said this courtesy car program is not intended to compete with commercial car agencies. She said the car may only be used between the airport and local trading or recreation area. She said these cars are for needed transportation. She urged a Do Pass for HB 430.

**Hearing on HB 433**

**{Tape : 2; Side : B; Approx. Time Counter : 4.6}**

**Sponsor:** Rep. Clarice Schrumpf, HD 12, Billings.

**Proponents:** none.

**Opponents:** none.

**Informational Witnesses:** Barry "Spook" Stang, Montana Motor Carriers Assoc.; Drew Livesay, Administrator of Motor Carriers Assoc. for Montana Department of Transportation; Colonel Bert Obert, Montana Highway Patrol.

**Opening Statement by Sponsor:**

**Rep. Schrumpf** said HB 433 relates to light vehicle and truck safety on highways. She said the purpose of this bill is to protect those of us who drive light weight vehicles from being blinded by snow or storms or by adverse weather. She handed out Administrative Rules by Montana Motor Carrier Services Division, **EXHIBIT(trh27a02)**, **EXHIBIT(trh27a03)**, **EXHIBIT(trh27a04)**, **EXHIBIT(trh27a05)**, **EXHIBIT(trh27a06)**.

**Proponents' Testimony:** none.

**Opponents' Testimony:** none.

**Informational Witnesses Testimony:**

**Barry "Spook" Stang** said they are neither a proponent or opponent to HB 433. He said they have some concerns about adverse weather conditions and other unanswered questions. **EXHIBIT(trh27a07)**.

**Drew Livesay** said he will answer questions from the committee.

**Colonel Bert Obert** brought statistics that indicate about 20% of the truck crashes are happening in adverse weather. **EXHIBIT(trh27a08)**, **EXHIBIT(trh27a09)**.

**Questions from Committee Members and Responses:**

**Rep. Smith** asked **Colonel Obert** for clarification of the speed limit of 45 m.p.h. in adverse weather conditions.

*{Tape : 2; Side : B; Approx. Time Counter : 16.6}*

**Rep. Gallik** asked **Rep. Schrumpf**, in Sub section 3, Lines 13 through 16, would this be an undue burden on those who do not know they have a special vehicle and are subject to the special speed limitations. **Rep. Schrumpf** said her thought is, if traffic would slow down to 45 m.p.h., and did not pass each other we would have a much safer highway in adverse weather conditions.

**Rep. Waitschies** asked **Colonel Obert** for his opinion if it is safe and reasonable to have a speed limit set, rather than drive according to conditions. **Colonel Obert** said there are situations where 45 m.p.h. are going to be too fast, careless driving would come into play and would dictate a slower speed.

**Closing by Sponsor:**



**{Tape : 3; Side : A; Approx. Time Counter : 0.3}**

**Rep. Schrumpf** said to look favorably upon HB 433, and some amendments are needed such as visibility and more clarity on 45 m.p.h.

**EXECUTIVE ACTION ON HB 363**

**Discussion:**

**Chairman Somerville** said executive action on HB 363 was postponed from Wednesday, 01/31/01. Additional information was requested because of Rep. Golie's question on Page 6, Lines 12 through 16, on required language.

**Brenda Nordlund** handed out a memorandum of the Federal Law that requires the language on Page 6, of HB 363. **EXHIBIT(trh27a10)**.

**Leanne Kurtz** said **Rep. Golie** asked her to prepare an amendment that removes the added language in Section 3, which is found on Page 6, Sub-section 9, the underlined language.  
**EXHIBIT(trh27a11)**.

**Motion/Vote:** REP. GOLIE moved that **AMENDMENT ON HB 363, HB036301.ALK DO PASS**. Motion failed 4-13 with Adams, Barrett, Golie, and Keane voting aye.

**Motion/Vote:** REP. BOOKOUT-REINICKE moved that **HB 363 DO PASS**. Motion carried 17-1 with Golie voting no.

**ADJOURNMENT**

Adjournment: 5:30 P.M.

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REP. ROGER SOMERVILLE, Chairman

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DONNA HUFFMAN, Secretary

RS/DH

**EXHIBIT** (trh27aad)